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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

CITY OF PORTLAND,

Defendant.

Case No. 3:12-cv-02265-SI

DECLARATION OF JUAN C. CHAVEZ

I, Juan C. Chavez, submit the following declaration:

I am the counsel of record for the Mental Health Alliance, and I make this declaration in support of the Mental Health Alliance's November 2022 Status Report for the purpose of identifying exhibits. My statements are true to the best of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

DECLARATION OF JUAN C. CHAVEZ

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1. **Exhibit 1** is the written report by MHA member Jonathan Brown. *United States v. Miami-Dade County, et. al.*, Case 1:13-cv-21570-BB, Dkt. 246 p. 4 (S.D. Fl. 2022).
2. **Exhibit 2** is a compilation created by MHA member Eben Hoffer of his survey of city jurisdictions with similar population size to the City of Portland and their body-worn camera pre-review policies.

I hereby declare that above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: February 27, 2023.

/s/ Juan C. Chavez
Juan C. Chavez, OSB #136428

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 13-cv-21570-BLOOM

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIAMI-DADE COUNTY, THE BOARD
OF COUNTY COMMISSIONERS, *et al.*,

Defendants.

/

ORDER TO SHOW CAUSE

THIS CAUSE is before the Court following receipt of the Lead Monitor's Interim Report, dated August 12, 2022. This report follows a glaring lack of compliance by the Defendants, resulting in life-threatening consequences to inmates.

The parties entered into a Consent Agreement ("Consent Agreement"), ECF No. [5-2], effective May 22, 2013, to remedy the constitutional violations at the Miami-Dade County correctional facilities regarding inmates' medical care, mental health care, and suicide prevention. A separate Settlement Agreement was signed on April 30, 2013, addressing inmates' protection from harm, fire and life safety, and inmate grievances. *Id.* at 5; ECF No. [85-1] ("Settlement Agreement"). The Consent Agreement contained deadlines and requirements for implementation of 119 provisions. The Settlement Agreement contains 56 paragraphs. Defendants were to implement all provisions of the Consent Agreement and Settlement Agreement within 180 days of the Effective Dates. More than nine (9) years later, Defendants *still* have not achieved full compliance with either Agreement.

At the last status conference before the Court on April 15, 2022, following the Independent

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Monitors' Compliance Report #14, Lead Monitor Susan McCampbell reported that 11 of the 115 paragraphs in the Consent Agreement remain in partial compliance, and 5 of the 56 paragraphs in the Settlement Agreement remain in partial compliance. *See* ECF No. [244] at 10. Ms. McCampbell advised the Court of the Monitors' significant concerns regarding inmate in-custody deaths in the last year. As the Monitors reported, there were 14 deaths in 2021, and 6 deaths in 2022 at the time of the status conference. *See id.* at 11.

The Monitors also expressed that one of the main reasons Defendants have failed to reach full compliance is a lack of leadership, but they remained optimistic due to the support and involvement of Miami-Dade County Mayor Daniella Levine Cava. The United States agreed with the Monitors' assessment that a lack of effective leadership hampered progress but echoed the Monitors' hope that the Mayor's active involvement would propel Defendants toward compliance.

Id. at 21, 25-26. At the status conference, the Mayor stated:

I'm here today to show this Court, the Department of Justice, and the monitoring team that the County at the highest level is absolutely committed to bringing Corrections into full and lasting compliance with the consent agreement.

But in addition to that, I want to ensure that Miami-Dade Corrections goes above and beyond the requirements of these agreements and orders and ultimately that we are able to position this department as a national leader and a model for corrections departments across the country. That is my commitment.

I consider that the consent agreement and any reforms of the utmost importance. And I have not been in the position for long, but I have now taken a deep dive, and will continue to do so, to learn as much as I can to drive these reforms necessary to make our system more efficient, safe and humane for our inmates and our staff.

Id. at 35-36.

Based upon the parties' representations, the Court announced it expected full compliance with the remaining provisions in the Consent Agreement and Settlement Agreement by November 18, 2022 and scheduled a final status conference on December 16, 2022.

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However, since the April status conference, Defendants appear to be no closer to reaching full compliance by the Court's deadline and inmates' safety and welfare remains a critical concern. The attached Interim Report prepared by Ms. McCampbell details that, as of August 12, 2022, there have been eleven (11) inmate deaths in 2022, four (4) of which were suicides. The Interim Report identifies four main issues that remain of critical concern to the Monitors:

1. Care of inmates with serious mental illness and segregation;
2. Inmate classification;
3. Mechanisms and systems to assess sentinel events (deaths, serious harm); and
4. Mental health staffing.

The devastating failures have prompted Ms. McCampbell and Dr. Robert Greifinger, medical monitor, to submit their resignations in this case as of December 30, 2022. Interim Report at 3. Since the Interim Report, the Court has learned of *more* incidents of self-harm and/or inmate-on-inmate violence:

- August 22, 2022 – an inmate was involved in a self-harm/suicide attempt at the Pretrial Detention Center, and as of August 26, 2022 is in the Mental Health Treatment Center at Turner Guilford Knight (“TGK”).
- August 24, 2022 – two co-housed inmates at TGK fought in their cell, resulting in severe injuries to one of the inmates. The injured inmate also attempted self-harm almost one year ago.
- August 26, 2022 – two inmates at Metro West Detention Center were involved in an altercation that resulted in one of the inmates sustaining severe injuries. The injured inmate remains in a coma with multi-organ failure and a poor prognosis.

These incidents highlight the Court's concerns that the Defendants' lack of compliance is resulting in serious and life-threatening consequences, and that the United States is not seeking any relief.

As the Interim Report succinctly states:

It is the responsibility of the plaintiffs, the U.S. Department of Justice, to engage the County in discussing remedies to the current situations, as well as attend to the Court's direction to propose sanctions if compliance is not achieved in the October tour. It is apparent that the strategies implemented/attempted since 2013 – summary action plans and guidance (outcomes and due dates) contained in the fourteen compliance reports have not resulted in reforms, harm continues, resources continue to be expended, and frustration grows on all sides.

Interim Report at 15. The Interim Report also states that “[a]t the core of the County’s inability to gain and sustain compliance are the internal culture of the organization, leadership ambivalence, and absence of sufficient subject matter expertise.” *Id.* at 2.

Despite the most recent incidents, and the long-standing deficiencies in protecting inmates from harm, the United States has failed to seek sanctions or other relief since May 2018, nor has the United States sought enforcement of the provisions of the Consent Agreement or the Settlement Agreement. The Consent Agreement specifically allows the United States to seek Court intervention, *see* ECF No. [5-2] at 33, VII.E., and the Settlement Agreement states, in pertinent part, that if the “DOJ determines that the County has not substantially complied with this Agreement the DOJ may pursue litigation against the County.” *See* ECF No. [85-1] at 21, VII.D.

Accordingly, it is **ORDERED AND ADJUDGED** that the parties shall appear before this Court on **October 12, 2022 at 9:00 a.m. at 400 North Miami Avenue, Courtroom 10-2, Miami, Florida 33128**. The United States shall show cause as to why, despite Defendants’ well-documented and repeated failures to comply with the Consent Agreement and Settlement Agreement, the United States has failed to seek enforcement of either Agreement. The United States shall further provide a written response to this Order **no later than September 16, 2022**. The response shall include a summary of sanctions the United States has requested of courts in similar cases, and why the United States has failed to seek those sanctions in this case.

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DONE AND ORDERED in Chambers at Miami, Florida, on August 30, 2022.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

US City	City Name	Prereview Allowed?	Policy 1	Link 1	Policy 2	Link 2
US Cities by population rank, ±10 ranking slots from Portland, OR (#26)						
15	Indianapolis	Prereview allowed or compelled, unless subject to forcible Garrity interview (not usable in court)	BWC SOP IV.A	https://citybase-cms-prod.s3.amazonaws.com/		
16	Charlotte	Prereview with prior supervisory approval in critical incident cases. allowed in all other cases.	400-006.V.I.1.d-e	https://charlottenc.gov/CMPD/D		
17	San Francisco	STATEMENT PRIOR TO VIEWING REQUIRED for high-level force	DGO 10.11 F	https://bja.ojp.gov/sites/q/files/x		
18	Seattle	No review any case responded to by force investigators	16.090-POL-2	https://www.seattle.gov/police-n	p. 46 A	https://www.seattle.gov/police-n
19	Denver	Prior approval of investigation/MCU cmdr required before viewing for reviewable force events	119.04 (4)(f)	https://www.denvergov.org/files/		
20	Oklahoma City	pre-review required before interview/statement, except crim investigation not in line of duty	188.30	https://www.okc.gov/home/show		
21	Nashville	No prereview for cases involving death or serious injury, allowed in all other cases	8.30.180 B	https://www.nashville.gov/sites/8.30.180	8.30.180 F	
22	EI Paso	No prereview during force incidents. Review following supervisor approval of initial report.	510.10	https://public.powerdms.com/EI		
		Review not allowed for officer-involved shootings. Allowed in all other cases (for serious force or DIC, only with prosecutor declination or after a reverse garrity warning is given - EG, following a voluntary interview)				
23	Washington DC		GO-SPT-302.13 V.D	https://go.mpdconline.com/GO/	GO-SPT-302.13 V.E.3	https://www.aele.org
24	Boston	Prereview allowed in all cases. In deadly force cases, at time determined by investigation spvsr.	RULE 405, Sect. 6	https://static1.squarespace.com		
25	Las Vegas	Prereview allowed in all cases.	5/210.01 Sect. 3	https://www.lvmpd.com/en-us/lr		
26	Portland OR	TBD				
27	Detroit**	Prereview allowed in all cases.	304.6-6	https://nyenhuislaw.com/wp-content		NOT CURRENT PO
28	Louisville	Prereview allowed in all cases.	SOP 4.31.15	https://louisville-police.org/Documentation		
		Prereview only with high-level supervisory approval for deadly force cases or other firearm discharge. Allowed in other cases.	Chap. XIII Sect. 15 (B.8)	https://memphispolice.org/wp-content	Chapt. 2 Sect. 8 (VI.A-B)	https://memphispolice.org
29	Memphis					
30	Baltimore	Review not allowed for serious force unless prosecutor declination or following voluntary interview	Policy 824, Review, § 5-6	https://www.baltimorepolice.org	Policy 1115 def. lvl 3 force	https://www.baltimorepolice.org
		Review only with Chief's approval in critical incidents (death, serious physical injury, firearm discharge resulting in injury). Prereview allowed in all other cases.	747.25 F	https://city.milwaukee.gov/Images	455.05 (critical incident definition)	https://city.milwaukee.gov
31	Milwaukee					
32	Albuquerque	No directives governing officer review of BWC footage prior to force reporting		https://documents.cabq.gov/police		
33	Fresno	policy is confidential, link may be out of date. if correct, no constraints on review	Policy 450	https://www.documentcloud.org/documents/1000000000000000000.html		
		"officers shall not view any video depictions related to an incident under investigation prior to providing a statement."	2517	https://www.tucsonaz.gov/files/2517.pdf		
34	Tuscon					
35	Sacramento	Prereview allowed in all cases.	525.07 C5	https://www.cityofsacramento.org/525.07-C5		
OTHER PEER CITIES						
11	Austin	Prereview allowed in all cases.	303.6(a-b)	https://cao-94612.s3.amazonaws.com/		
14	Columbus	Prereview allowed in all cases.	11.07.III.EE	https://www.columbus.gov/police		
38	Atlanta	No prereview prior to any force report. no review in lethal force cases.	4.12.2-3	https://public.powerdms.com/AF		
		No review in deadly force cases without high-up authorization. Procedure for constraining review in complaint cases. prereview otherwise allowed.	704.40	https://coloradosprings.gov/sites		
40	Colorado Springs					
41	Raleigh	Prereview allowed in all cases.	1109-18	https://cityofraleigh0drupal.blob		
44	Miami	Review in critical incidents requires authorization from investigator. Prereview otherwise allowed.	6.4.4	https://www.miami-police.org/Details		
45	Oakland	Critical Incident + Investigations review requires high-up auth. Prereview otherwise allowed.	I-15 IV	https://public.powerdms.com/oakland		
46	Minneapolis	No prereview in critical incidents. Otherwise allowed. All access of footage is documented.	4-223 (IV-A-9)	https://www.minneapolismn.gov	IV-D-5	https://www.minneapolismn.gov
53	New Orleans	Prereview allowed in all cases.	PR447.6(b)	https://www.fopno.com/uploads		
68	Pittsburgh	Prereview allowed in all cases.	69-03 (15-16)	https://pittsburghpa.gov/files/police		
		Officers have presumptive right to review, but BPD "reserves the right" to restrict media access. Officers may only look at their own video.	P-17.020	https://www.cityofboise.org/media/P-17.020		
94	Boise					
122	Salt Lake	Prereview allowed in all cases.	422.9	http://www.slcpd.com/ass3ts/uploads/422.9	305.9	https://www.slcpd.com